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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,585	04/14/2004	James Kam Fu Kong	V9661.0049	6212
<div>32172 7590 09/07/2007</div> <div>DICKSTEIN SHAPIRO LLP</div> <div>1177 AVENUE OF THE AMERICAS (6TH AVENUE)</div> <div>NEW YORK, NY 10036-2714</div>				
			<div>EXAMINER</div> <div>JACKSON, BRANDON LEE</div>	
			<div>ART UNIT</div> <div>3772</div>	<div>PAPER NUMBER</div>
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No. 10/823,585	Applicant(s) FU KONG ET AL.	
	Examiner Brandon Jackson	Art Unit 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>4/14/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 32. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "fracture table" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure

number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 40 is not in figures 5 and 6 as disclosed in paragraph 0032. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective

action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to because Fig. 1 shows element 40 surrounding element 20, then Fig. 3 shows element 30 as surrounding element 20. Then Fig. 4 shows element 30 as surround element 22 and Fig. 5 shows element 44 as surrounding element 30 that is surrounding element 20, not 22. It is unclear of the actual assembly of the claimed invention. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 11-12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is unclear how the lateralization member can rotate while the interference fittings of the inner wall are engaging with complementary interference fittings of the outer wall of the supporting member. From the drawings, one of ordinary skill in the art would deduce that the support member cannot rotate while engaging the inner wall because of how the interference members engage.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1- 3, 5-7, 16-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller et al. (US Patent 5,515,562). Miller discloses a fracture table (14) comprising a support member (12, 20) adapted to be supported in a fixed position, and a lateralization member (10) mounted onto the supporting member (12, 20) via cylindrical

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post member (20) and expanding laterally therefrom, wherein the device is fully capable of varying the lateralization effect. The lateralization member (10) and support member (12, 20) are formed of a material (col. 4, lines 14-17) that can resist a pressure exerted thereon (col. 4, lines 7-10) and maintain shape during use. The lateralization member (10) comprises a substantially cylindrical member (43) with a recessed portion formed by an inner wall (44). The cylindrical member (43) has a substantially circular cross-section (fig. 4). The lateralization member (10) exerts a lateralization vector force to a user's body portion and provides a lateralization effect to the user's body portion (cols. 3-4, 60-10) and maintains it throughout the medical procedure.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 4 and 8-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al. (US Patent 5,515,562) in view of Kurland (US Patent 4,653,482). Miller substantially discloses the claimed invention; see rejections to claims 1, 3, and 6. Miller fails to disclose the recessed portion is located in an eccentric position on the cylindrical member, a plurality of interference fittings formed on the inner wall for engaging with complementary interference fittings formed on the supporting member, a padding member wrapped around the lateralization member, and the lateralization member can rotate in at least one direction relative to the supporting member. However, Kurland teaches a traction table (fig. 1) comprising a lateralization member (31) comprising a plurality of interference fittings (col. 2, lines 61-63) and a support post 32 having a plurality of complementary interference fittings (fig. 4) to engage the inner wall of the lateralization member (31). The lateralization member has a recesses inner wall (fig. 4), and a padding member (18) (col. 2, lines 41-43) that wraps around the lateralization member (31). The lateralization member (31) can rotate at least in one direction relative to the post member (32) and support member (34). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the post member of Miller to have interference fittings, as taught by Kurland, and replace the lateralization member of Miller with the padded lateralization member, as taught by Kurland, in order to prevent slippage of the lateralization member along the post member.

With respect to claims 8 and 13, according to applicant's specification the eccentric position of the recessed portion on the cylindrical member provides no

advantage, is not used for a particular purpose, and does not solve a stated problem. Moreover, Applicant discloses the recessed portion can be positioned in the center of the cylindrical member for uniform lateralization on page 5 of Applicant's Specification. The Miller/Kurland device would function equally as well with the recessed portion positioned eccentrically on the cylindrical member. Therefore, it is a mere design choice and would be obvious to one of ordinary skill in the art at the time of the invention to modify the Miller/Kurland device to have the recessed portion positioned eccentrically on the cylindrical member.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al. (US Patent 5,515,562) in view of Spetzler et al. (US Patent 6,805,453). Miller substantially discloses the claimed invention; see rejection to claim 1 above. Spetzler teaches a medical device (100) comprising a drape (110) to cover to the device (100). Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to modify the Miller device to have a drape covering the lateralization device, as taught by Spetzler, in order to keep the device sterile after usage.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bassett et al. (US Patent 5,522,792), Yamate (US Patent 3,423,773), Bonnell (US Patent 5,056,535), Torrie et al. (US Patent Application Publication 2007/0161935), Reesby et al. (US Patent 6,295,671), Lamb et al. (US

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Patent 6,286,164), Lamb et al. (US Patent 5,658,315), Monroe (US Patent 4,989,848), Rush, Sr. (US Patent 3,745,996).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brandon Jackson whose telephone number is (571)272-3414. The examiner can normally be reached on Monday - Friday 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brandon Jackson
Examiner
Art Unit 3772

BLJ


PATRICIA BIANCO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700
9/3/07